IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9634 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJENDRASINH RAMESHW ARSINH RAJPUT

Versus

COMMISSIONER OF POLICE

Appearance:

MS JAYSHRI BHATT for MS MITABEN R TALREJA for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 17/04/2000

ORAL JUDGEMENT

#. Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order on November 3, 1999 in exercise of powers under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) detaining the petitioner - Rajendrasinh Rameshwarsinh

Rajput, under the provisions of the PASA Act.

#. The detaining authority considered one offence registered against the detenue under the Bombay Prohibition Act and the statements of three anonymous witnesses for arriving at a conclusion that the petitioner is a "bootlegger" as defined under the provisions of the PASA Act. After considering less drastic remedies, the detaining authority came to a conclusion that the detention under the PASA Act is the only efficacious remedy that can be resorted to in order to prevent the petitioner from pursuing his illegal and anti-social activities. The detaining authority exercised powers under section 9(2) of the PASA Act and maintained anonymity in respect of the identity of the witnesses on being satisfied that the incidents narrated by the witness and the fear expressed by them are correct and genuine.

#. The detenue/petitioner challenges the order of detention on various grounds. However, Ms. Bhatt, appearing for Ms. Talreja, learned advocate for the petitioner has restricted her arguments to the fact that there is improper exercise of power under section 9(2) of the PASA Act and therefore, the statements cannot be considered. She further submitted that the petitioner was on police remand when the order of detention was passed. There is only one offence registered against the detenue and therefore, the order passed by the detaining authority is bad in law and the same may be quashed and set aside.

#. Mr. K.T. Dave, learned AGP, appearing for the respondents has strongly opposed this petition. He submitted that the petitioner is involved in bootlegging activities which is detrimental to public health and public order and therefore, the petition may be dismissed.

#. Having regard to the rival side contentions, it may be noted that the detaining authority has placed reliance on the statements of two anonymous witnesses. These statements have been recorded on November 1, 1999 and November 2, 1999. The said statements have been verified by the detaining authority on November 3, 1999. The order is passed on that very day. Keeping in light the principles laid down by a Division Bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat & Ors. 1993 (2) GLR 1659, and in the case of Bai Amina, w/o Ibrahim Abdul Rahim Alla v. State of Gujarat, 1981 GLR 1186, it cannot be said that the powers under section

9(2) of the PASA Act are properly exercised by the detaining authority. The detaining authority has not filed any affidavit-in-reply nor is there any contemporaneous material to indicate that the detaining authority undertook the exercise of considering the background, antecedents, character etc. of the detenue while arriving at subjective satisfaction about the correctness and genuineness of the statements and fear expressed by the witnesses so also about the need for exercise of powers under section 9(2) of the PASA Act. As such, the statements are verified and the order is passed on that very day and there was no time lag which could have permitted this exercise. Under the circumstances, there is improper exercise of powers under section 9(2) of the PASA Act which can be said to have affected the right of the detenue of making an effective representation.

#. Another aspect that adversely affects the order of detention is that the detenue was on police remand when the order of detention was passed. The detaining authority was aware about this aspect. However, the detaining authority has not recorded justification for such detention on account of any compelling reasons as stated by the Apex Court in the case of Rameshwar Show, AIR 1964 SC 334, as reiterated in the case of Dharmendra Sugarchand Chelawat vs. Union of India & ors., AIR 1990 SC 1196 and again in the case of Sanjeev Kumar Aggarwal v. Union of India & ors., AIR 1990 SC 1203 and latest in the case of Ahmed Nisar v. State of Tamil Nadu, 1999 SCC (Cri) 1469, Para 46 and therefore, the order of detention cannot be supported as it does not indicate any genuine reason for passing the detention order (for "immediately preventing the petitioner from pursuing his activities").

#. Barring one prohibition case, there does not appear to be any other antecedents in the form of a registered offence. The statements of anonymous witnesses, for the above reasons, cannot be considered. Keeping all these aspects of this particular case in mind, this Court is of the view that the impugned order cannot be sustained and the petition deserves to be allowed.

#. The petition is allowed. The impugned order of detention dated November 3, 1999 is hereby quashed and set aside. The detenue - Rajendrasinh Rameshwarsinh Rajput is ordered to be set at liberty forthwith if not required in any other matter. Rule made absolute with no order as to costs.

[A.L. DAVE, J.]

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